

GOVERNMENT OF PAKISTAN
SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

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Islamabad, the 22nd November, 2017

NOTIFICATION

S.R.O. 1208 (I)/2017.— The following draft Companies (Mediation and Conciliation) Regulations, 2017 proposed to be made by the Securities and Exchange Commission of Pakistan in exercise of the powers conferred by sub-section (1) of section 512 read with section 276 of the Companies Act, 2017 (XIX of 2017), is hereby published for the information of all the persons likely to be affected thereby and notice is hereby given that comments, if any, received within fourteen days of the date of this notification will be taken into consideration.

DRAFT REGULATIONS

PART I
PRELIMINARY

1. Short title, commencement and applicability.— (1) These Regulations may be called the Companies (Mediation and Conciliation) Regulations, 2017.

(2) They shall come into force on the date of establishment of Mediation and Conciliation Panel by the Commission pursuant to regulation 3 of these Regulations.

2. Definitions.— (1) In these regulations, unless there is anything repugnant in the subject or context,—

- (a) “Appellate Bench” means the Appellate Bench of the Commission established under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997;
- (b) “Annexure” means the annexure appended to these regulations;
- (c) “Commission” shall have the same meaning as assign to it in clause (16) of sub-section (1) of section 2 of the Act;
- (d) “Panel” means Mediation and Conciliation Panel established and maintained by the Commission under regulation 3; and
- (e) “party” means a party to a relevant dispute.

(2) The words and expression used but not defined in these regulations shall have the same meaning as are assigned to it in the Act.

PART II
PANEL OF MEDIATORS OR CONCILIATORS

3. Establishment of Panel.— (1) Subject to regulation 4, the Commission shall maintain a Panel of mediators or conciliators eligible to be appointed as mediators or conciliators under these regulations.

(2) The Panel maintained under sub-regulation (2) shall be made available on the website of the Commission.

(3) The Commission may invite applications from time to time from persons desirous of being included in the Panel as mediator or conciliator:

Provided that the Commission after its satisfaction and necessary inquiries either accept the application or refuse to accept and shall record the reasons in writing for the same.

4. Qualifications of persons for empanelment.— A person shall not be entitled to be included in the Panel unless he, —

- (a) has been a retired Judge of District and Sessions Judge, High Court or Supreme Court of Pakistan; or
- (b) has been a retired Member of a Tribunal constituted by the Government under any law for the time being in force; or
- (c) is a qualified legal practitioner for not less than ten years; or
- (d) is or has been a professional for at least ten years of continuous practice as Chartered Accountant or Cost and Management Accountant; or
- (e) is an expert in mediation or conciliation who has successfully undergone training in mediation or conciliation.

PART III
REMOVAL OF NAME FROM THE PANEL

5. Removal of name.— The Commission may after recording reasons in writing and after giving an opportunity of being heard, remove any person from the Panel.

6. Grounds of removal.— A person shall be removed by the Commission from the Panel, if he, —

- (a) is an undischarged insolvent or has applied to be adjudicated as an insolvent and his application is pending;
- (b) has been convicted for an offence which, in the opinion of the Commission, involves moral turpitude;
- (c) has been removed or dismissed from the service of the Government or the Corporation owned or controlled by the Government;

- (d) has been punished in any disciplinary proceeding, by the appropriate disciplinary authority; and
- (e) in the opinion of the Commission such mediator or conciliator has some financial or other interest in the subject-matter of dispute or is related to any of the parties or some other conflict of interest which is likely to affect his functions as a mediator or conciliator.

7. Application for referring the matter to the Panel.— An application to the Commission or the Appellate Bench, as the case may be, for referring the matter to Panel in terms of sub-section (1) of section 276 of the Act, shall be made with mutual consent of parties to the dispute along with a non-refundable fee challan of Rs. 5,000/-.

8. Expenses of the mediation and conciliation.— (1) At the time of referring the matter to the mediation or conciliation, the Commission or the Appellate Bench, as the case may be, may fix the fee of the mediator or conciliator.

(2) The expense of the mediation or conciliation including the fee of the mediator or conciliator, shall be borne equally by the contesting parties or otherwise as may be directed by the Commission or the Appellate Bench, as the case may be:

Provided that each party shall bear the costs for production of witnesses on his side including experts or for production of documents.

(3) The mediator or conciliator may before the commencement of the mediation or conciliation, direct the parties to deposit equal share of the probable costs of the mediation or conciliation including the fees to be paid to the mediator or conciliator.

(4) The mediation or conciliation shall commence only on the deposit of amount referred to in sub-regulation (3) by the parties and in case amount is not paid before such commencement, the mediation or conciliation shall be deemed to have terminated.

PART IV

CONDITIONS AND PROCEDURE OF MEDIATION AND CONCILIATION

9. Terms and Conditions to be followed by Mediator or Conciliator.— The mediator or conciliator shall,—

- (a) follow and observe the regulations strictly in true letter and spirit;
- (b) not carry on any activity or conduct which shall reasonably be considered as conduct unbecoming of a mediator or conciliator;
- (c) uphold the integrity and fairness of the mediation or conciliation process;

- (d) ensure that the parties involved in the mediation or conciliation are fairly informed and have an adequate understanding of the procedural aspects of the process;
- (e) conduct all proceedings related to the resolutions of a dispute, in accordance with the relevant applicable laws; and
- (f) shall permit the parties to be present personally or through an authorized representative at the sessions or meetings notified by the mediator or conciliator:

Provided that if any party finds conduct of mediator or conciliator in violation of any conditions laid down in this regulations, the party may immediately bring it to the notice of the Commission or the Appellate Bench, as the case may be, which shall immediately after affording an opportunity of being heard change the mediator or conciliator.

10. Procedure for disposal of matters .– The mediator or conciliator in disposal of matters shall follow the following procedure, namely:-

- (a) he shall proceed and dispose of the process within ninety days of the date on which reference was referred and forward his recommendations forthwith to the Commission or the Appellate bench, as the case may be:
Provided that the Commission or the Appellate Bench, as the case may be, may on furnishing special reasons extend such time not exceeding fifteen days;
- (b) he shall in consultation with the parties fix the date or time of each mediation or conciliation session, where all parties have to be present;
- (c) he shall hold the mediation or conciliation at the place decided by the Commission or the Appellate Bench as the case may be or such other place where the parties and the mediator or conciliator jointly agree;
- (d) he may conduct joint or separate meetings with the parties;
- (e) each party shall, ten days before a session, provide to the mediator or conciliator a brief memorandum setting forth the issues, which need to be resolved, and his position in respect of those issues and all information reasonably required for the mediator or conciliator to understand the issue and a copy of such memorandum shall also be given to the opposite party or parties:

Provided that in suitable or appropriate cases, the above mentioned period may be reduced at the discretion of the mediator or conciliator;

- (g) each party shall furnish to the mediator or conciliator such other information as may be required by him in connection with the issues to be resolved.

11. Settlement agreement.— (1) Where an agreement is reached between the parties, the same shall be reduced to writing and signed by all the parties including their representatives if any.

(2) The mediator or conciliator shall after his signatures forward the same to the Commission or the Appellate Bench, as the case may be.

(3) Where no agreement is reached between the parties, or where the matter has partially been agreed, the mediator or conciliator shall report the same to the Commission or the Appellate Bench, as the case may be, in writing.

12. Matters not to be referred to the mediation or conciliation.— The following matters shall not be referred to mediation or conciliation penal, namely:-

- (a) cases involving serious fraud, fabrication of documents forgery, impersonation, etc;
- (b) cases involving prosecution for criminal and non-compoundable offences; and
- (c) cases which involve public interest or interest of persons who are not parties before the Commission or the Appellate Bench, as the case may be.

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(Bilal Rasul)
Secretary to the Commission